



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision **Request for Variance** **James and Jody Gangi/Map 99, Lot 61**

May 4, 2011

Applicant: James and Jody Gangi
165 Grove Steet
Waltham, MA 02453

Location: 45 Eden Lane, Moultonborough, NH (Tax Map 99, Lot 61)

On February 16, 2011 the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of James and Jody Gangi (hereinafter referred to as the "Applicant" and/or "Owner") for a variance from Article III (B)(1) to allow for the existing, newly constructed residential addition to remain within the front setbacks on the parcel located in the Agricultural Residential (AR) Zoning District.

Based on the application, testimony given at the hearings, and additional documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located at 45 Eden Lane (Tax Map 99, Lot 61).
- 2) The applicants are the owners of record for the lot.
- 3) The lot is located in the Agricultural Residential (AR) Zoning District.
- 4) At the opening ZBA meeting, the applicant waived his right to a five (5) member Board, there being only four (4) members present.
- 5) The existing addition to the structure was recently constructed in violation of the fifty (50) foot centerline setback and the twenty-five (25) foot front setback from the Right of Way.
- 6) The approx. ten (10) foot by nineteen (19) foot addition was constructed in place of an existing porch area in 2010.
- 7) The violation was discovered by the Code Enforcement Officer and the application was instructed to remove the structure or apply for a Variance from the ZBA.

- 8) The owner's construction contractor did not change the originally approved Building Permit to expand the structure upwards, at the time that the expansion outwards was determined to be needed.
- 9) The ZBA voted 4-0 to conduct a Site Visit at the location when the snow had melted and continued the Public Hearing to the Site Visit on April 16, 2011.
- 10) The ZBA conducted a Site Visit on April 16, 2011 and continued the Public Hearing to the regular meeting date of April 20, 2011.
- 11) The applicant presented a petition indicating that the neighbors along Eden Lane were in support of his request for a Variance.
- 12) The applicant stated that his contractor was likely liable to him for the omission of the amended Building Permit, but had not returned his requests for information or contact from him, and that litigation was not something he wished to pursue at this time.
- 13) The applicant indicated that the Site Visit demonstrated the difficulties of building in a another location on the site due to the presence of a brook running along the back end of the site, the existing location, the size of the lot, and the locations needed for the septic system.
- 14) The applicant stated that he was not aware of the error until the Code Enforcement Officer had contacted him about it and that he had allowed work to proceed in good faith, not knowing that the Building Permit was not amended.
- 15) The existing addition is located approx. seven (7) feet from the right of way at its closest point.
- 16) At the second meeting, Kevin McCarthy stepped down from the application. Nicol Roseberry, alternate, was appointed to sit in his stead.
- 17) No members of the public wished to speak on the application.
- 18) Granting the Variance will not be contrary to the public interest as the structure is in a residential neighborhood and of similar design and location to other structures.
- 19) Granting the Variance is consistent with the spirit of the Ordinance as the lot size is small and there is sufficient distance between the new structure and the abutting structures.
- 20) By granting the Variance, substantial justice is done.
- 21) Granting the Variance does not diminish the value of surrounding properties as the neighborhood is largely comprised similar houses.
- 22) Special conditions exist such that a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship as the lot size and the location of the existing structure limit the

potential area of expansion available to the applicant, and the error occurred by accident, and not intentionally on behalf of the applicant.

- 23) The Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, Hopkins, Nolin, Heal, Roseberry), and none (0) opposed to continue the Public Hearing to May 4, 2011, and to direct the Town Planner to draft a Notice of Decision to Grant the Variance, to be reviewed by the Board at the May 4, 2011 Regular Meeting.

The Board of Adjustment continued the Public Hearing to April 16, 2011, April 20, 2011 and May 4, 2011. The Board of Adjustment closed the public portion of the hearing on May 4, 2011. Based on the above Findings of Fact, the Board of Adjustment voted by a vote of five (5) in favor (Stephens, Hopkins, Heal, Nolin, Roseberry), none (0) opposed, to **GRANT** the request for Variance.

This decision shall not take effect until thirty (30) days have elapsed and no request for rehearing has been filed in accordance with RSA 677:2, or that if such request has been filed, it has been dismissed or denied, in accordance with RSA 677:3.

Robert H. Stephens
Chairman, Zoning Board of Adjustment

Date _____